

US DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

CIVIL NO. 05-11594 RCL

GERALDINE FAVALORO, for herself and on
behalf of all others similarly situated,

Plaintiff,

vs.

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE, BAYVIEW CREMATORY, LLC,
a New Hampshire Limited Liability Company,
LINDA STOKES, TRUSTEE OF THE DEKES
REALTY TRUST OF 107 SOUTH BROADWAY,
LAWRENCE, MASSACHUSETTS, and JOHN J.
GENTILE,

Defendants.

DEFENDANT BAYVIEW CREMATORY LLC.'S
ASSENTED TO MOTION TO FILE REPLY TO PLAINTIFF'S OBJECTION
TO MOTION TO DISMISS

Defendant Bayview Crematory LLC. ("Bayview") moves for leave to file a reply
to Plaintiff's Objection to the pending Motion To Dismiss.

Bayview has attached to this motion a brief two paragraph Reply that it wishes to
file in response to the twenty-four page Objection filed by plaintiff.

On October 14, 2005, undersigned counsel corresponded by email with plaintiff's
counsel, Lisa Debrusse Johnson, who assented to this motion. Undersigned counsel did
not contact counsel for the other defendants._

WHEREFORE, Bayview requests this Court to allow Bayview to file the attached
Reply to Plaintiff's Objection to the pending Motion To Dismiss.

Respectfully Submitted,

/s/ Andrew R. Schulman
Andrew R. Schulman
GETMAN, STACEY,
SCHULTHESS & STEERE, PA
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(603) 634-4300
Mass. BBO No. 549769

October 24, 2005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been served as follows:

By Email Via The Court's ECF Facilities:

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By U.S. Mail, First Class Postage Prepaid On October 25, 2005:

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/s/Andrew R. Schulman,
Andrew R. Schulman

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GENTILE,

Defendants.

DEFENDANT BAYVIEW CREMATORY LLC.'S
REPLY TO PLAINTIFF'S OBJECTION TO MOTION TO DISMISS

Defendant Bayview Crematory LLC. ("Bayview") replies as follows to Plaintiff's
Objection to the pending motion to dismiss

1. At this juncture, the court must give credence to all well-pled facts and indulge all reasonable inferences that fit the plaintiff's stated theory of liability. Feliciano v. State of Rhode Island, 160 F.3d 780, 788 (1st Cir. 1998). See also, Santiago de Castro v. Morales Medina, 943 F.2d 129, 130 (1st Cir. 1991). At the same time, the Court must "stop short...of 'swallowing the plaintiff's invective hook, line, and sinker; bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like need not be credited.'" Rogan v. Menino, 175 F.3d 75, 77 (1st Cir. 1999), quoting Aulson v.

Blanchard, 83 F.3d 1, 3 (1st Cir. 1996) (internal brackets omitted). See also, Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61 (1st Cir. 2004).

2. In this case, plaintiff alleges nothing beyond invective and bald assertions with respect to the essential question of whether her particular decedent was mishandled in any way. Plaintiff does not allege a *factual basis* for her claim and she does not allege that anything *particular* occurred with respect to her decedent. Therefore she fails to state a claim upon which relief may be granted.

WHEREFORE, Bayview requests this Court to dismiss plaintiff's common law claims against Bayview for the alleged intentional and negligent infliction of emotional distress.

Respectfully Submitted,

/s/ Andrew R. Schulman
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